

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
November 29, 2018

Gambling Control Board Conference Room
Department of Public Safety
45 Commerce Drive, Augusta, Maine
Starting Time 9:00 a.m.

Commission Members Present: Michael Timmons, Chair, William McFarland, and Michael Graham

Commission Members Absent: None.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Jaime Wood, Miles Greenleaf, and Zachary Matzkin

1. Call the Meeting to Order and Introductions: Michael Timmons, Chair

2. Review and Approval of Minutes

Commissioner McFarland made a motion to approve the minutes of July 20, 2018 as presented. Commissioner Graham seconded. Vote 3-0.

Commissioner Graham made a motion to approve the minutes of August 22, 2018 as presented. Commissioner McFarland seconded. Vote 3-0.

Review and Approval of Decision and Orders

Commissioner McFarland made a motion to approve the decision and order of November 1, 2018 for Davric Maine Corporation as known as Scarborough Downs. Commissioner Graham seconded. Vote 3-0.

Commissioner McFarland made a motion to approve the decision and order for renewal licenses of Off-Track Betting facilities for 2019 as stated. Commissioner Graham seconded. Vote 3-0.

Commissioner Graham made a motion to approve the decision and order for pari-mutuel harness racing licenses, date assignment for year 2019, and authorization to simulcast for the fairs with the amendment on page 7 delete Oxford Fair. Commissioner McFarland seconded. Vote 3-0.

- 3. Approval of the 2019 Sire Stakes Schedule.** CMR 01-017, Chapter 9, Section 1.3 requires the Commission to approve the annual sire stakes schedule. The Sire Stakes Advisory Committee has developed a proposed 2019 schedule. The Commission will review the proposed schedule and determine whether to approve it or amend it. Commissioner Timmons opened this item for review. Mr. Sweeney stated that he met with and discussed the schedule with Wendy Ireland, Diann Perkins, Jim Kelley and Miles Greenleaf. The schedule was prepared by taking into consideration when Plainridge was racing and letting the 2 year old horses start later in the year. There was some uncertainty if Northern Maine would be racing and if sire stakes did go up there would there be enough horses to race. Commissioner McFarland stated that the fair dates for Northern Maine Fair that have been approved by the Department of Agriculture and the fair dates are June 28, 29, 30, and July 1, 2, and 3. AAG, Guay stated that he would like to remind everyone despite advice by the department they withdrew their application so they have not even been awarded a license at this point. Just to be clear they made it very clear you can get a license but not get race dates. They have two steps to complete. One is to get a license and two to get race dates. They have a long road to hoe here. Mr. Sweeney stated he can only speak for himself because the committee is not here. If those

are the days they are going to request to race and they are allocated those days, there are two legs of sire stakes within that window the 3 year old pacers at Scarborough Downs on the 29th and the 3 year old trotters in Bangor on the 3rd; he wouldn't have a probably with sending both of those legs up to Northern Maine. Commissioner Timmons stated that those are unknown because we don't have any answers yet and they don't even have any request. Mr. Sweeney stated that Bangor Raceway have traditionally been the seed ground for the pari-mutuel fairs. The horse supply gets developed at Bangor and then when Bangor closes their horse supply goes elsewhere. Bangor is still racing 3 days during that period of time. He doesn't know what Bangor horsemen will do or what Bangor will do if Northern Maine applies for those days. Ms. Patterson stated that Bangor is racing 4 days that week. Commissioner McFarland stated that none of this is going to be determined until there is such thing as some kind of request. Ms. Perkins stated that she is in favor of supporting Northern Maine Fair for harness racing. This is a long trip but this is where harness racing started in the state, and she thinks they need to support them up there. Commissioner Graham asked what happens if Northern Maine Fair applies for dates, they'd have to reopen the dates hearings. Can we then change dates that we've already awarded? AAG, Guay stated his advice that he had given at the last hearing when he was acting as the attorney for the executive director. It is a lot harder to take dates away from people than it is to give dates to people and then to have them back out. If you think you're going to get relief for your fair for example, and you're going to be given different fair dates; then apply for race dates consistent with that expectation so that the Commissioners can weigh it, and you could have made it conditional sort of grant if the Commissioner of Agriculture grants a fair license they shall have this date. That's one thing you could have done that at the race date hearing but for now it is questionable whether you can order people to race dates where they haven't requested it. He's going to suggest that to the extent that you've given dates to certain licensees, and theoretically they've put into place business arrangements and contracts and planning around those dates. To take those dates away is going to be a very interesting process to undertake; so, to answer your question this is unprecedented, and the best thing that could have happen was to proceed forward with the dates. That's what Topsham chose to do. You heard Topsham hasn't 100 percent decided yet, but at least they have race dates now and if they don't race they can give those dates up. Then it's a lot easier for other people to step up and take the dates then it would be to take dates away from other tracks and give to a new fair. Commissioner McFarland concurs with what AAG, Guay expressed. The reason that Northern Maine pulled their application at the time was the dates that they had on their application had no bearing on when their fair was going to be held as far as they were concerned. They did not know what dates they might get and were denied on their first application to change dates; and subsequently, filed an appeal which the department reviewed and then they put in another application, and reduced their request from 9 to 6 and that was a way for them to hopefully to get dates which ultimately, they did. However, he would ask a question of counsel. Would it be possible for those that have already been granted a date to relinquish the date? AAG, Guay stated he would suggest there's a difference between an entity that's been awarded a date who would voluntarily give it up for the good of the industry. This is behavior he's seen in this industry that hasn't been credited enough to various tracks. He's seen various tracks work cooperatively where if you've had the dates for the previous years you would get them. He thinks the two commercial tracks have done a really good job. Can they do it. They have done it in the past but the question is whether can you force them to do it which is a different legal question all together. Yes, if any fair or commercial tracks would be willing to voluntarily relinquish dates it could occur. People don't realize when we're doing a race date hearing that it's an adjudicatory proceeding. Maybe it's less adjudicatory now than it was 30 or 40 years ago, when they were fighting tooth and nail

for every day and every night. It's still there's been an award, dates have been given to these entities and to take them away would be very difficult. Commissioner Timmons asked for any other comments from anyone. Do we need to vote this calendar in? Mr. Jennings stated he believes so. Commissioner Graham stated that he would like to postpone the sire stakes schedule until next meeting to see what Northern Maine fair is going to do because he just heard that taking dates back is more difficult, and he thinks it would be the same thing with sire stakes. Commissioner McFarland stated that they have a very short window here to December 13th. He is also aware of all of the schedules that have to go out and this puts a handicap on trying to get things done. Commissioner Timmons stated that it's been suggested that we postpone their decision until the 13th. Mr. Jennings stated that Northern Maine fair's meeting is December 13th too. He doesn't know what time they meet. AAG, Guay stated that isn't one of the relevant decisions it's Topsham and they're meeting next week. Mr. Jennings stated that they are meeting on Monday. AAG, Guay stated making a decision before you know what Topsham's doing he thinks at a minimum you've got two moving parts right now at least in December you'll only have one moving part. Commissioner Graham stated he would think we could contact Northern Maine fair and say we have a meeting on the 13th but we need to know some idea of what way you're going. AAG, Guay stated at least their intent. Commissioner McFarland stated that he's had due to the issue of changing dates, he's had several conversations with both Houlton Fair a non-pari-mutuel fair and Northern Maine Fair a pari-mutuel fair with both of their presidents; and it is the intension he safely can say talking with the president at Northern Maine Fair that they do wish to continue racing at Northern Maine Fair at least five of the six days that they've requested. He has expressed to him for sure. AAG, Guay stated with that then the executive director is probably going to approach people who've been awarded race dates to see what their willingness would be. Mr. Jennings stated that the email from Mr. Winslow said that they intend to talk to these two commercial tracks. AAG, Guay stated that it would be really helpful if the department could work this out before the meeting because it's really going to take a voluntary kind of solution beyond the scope of what these guys could order. Ms. Perkins stated that you do have people that have invested a lot of money into these stake horses and they do care about the condition of the track, and in the past Topsham's track has not be ready. After they race at Northern Maine Fair in the past, Topsham has always been their next track to go to so what has happened is if a division happens to race at Northern Maine Fair they do not like them to race at Topsham. They like to give them a week off. When they've worked on this schedule in the past, there are certain things that they've done. They've also watched for some of these fairs if they've raced on a Saturday and there's a rainout that means they've got to go to the next fair. These are things when they talk about these schedules and take into consideration. Mr. Sweeney said that the way this schedule is put together right now if they sent the 3 year old pacers up to Northern Maine on the 29th of June, they're coming back and racing 3 weeks in a row after that and that's not something they normally would do. It effects the entire rational of putting the schedule together. Commissioner Graham made a motion that they postpone this until the next meeting. Commissioner McFarland seconded. Commissioner Timmons asked for further discussion. There was none. He asked for those in favor of the motion. Vote 3-0.

4. **Final Adoption of Amendments to CMR 01-017, Chapter 5, 9 and 11.** On August 1, 2018, a Notice of Agency Rulemaking Proposal was published in Maine's five daily newspapers, which began the comment period on proposed amendments to Chapters 5, 7, 9, 11, and 17 of the Commission rules. A public hearing was held on August 22, 2018 and the deadline for written comments ended at the close of business on September 7, 2018. At its September 19, 2018, the Commission reviewed and responded to all of the

comments for these three chapters, and it directed the staff relative to the composition of the final rule language. The Commission will now consider whether to finally adopt the amended rules, the responses to comments, the basis statements and the statements of impact on small businesses. Mr. Jennings stated that the Commission has already reviewed the comments and reviewed these three rules and made their decision on them. He stated in Chapter 11 page 12 there is a highlighted prepositional phrase and he moved the position of the prepositional phrase. Commissioner McFarland made a motion that they adopt Chapter 11 Medications, Prohibited Substances and Testing as amended portion on page 12 as printed to include the responses to comments, basis statement and the impact on small business. Commissioner Graham seconded. Vote 3-0.

AAG, Guay stated that he has not been involved in the drafting or formulation of the rule. Mr. Jennings agreed that AAG, Guay has not been involved in the drafting or formulation of the rule.

Mr. Jennings stated that they will go to Chapter 5. He stated that there were two proposed amendments that came forward that came from the MHHA. The first one had to do with a purse distribution plan on page 5. During deliberations, you decided that that was worth preserving and carrying forward. The second change was a new section 8 which no longer exist in this draft because that had to do with track maintenance and conditions. During deliberations, you decided to not adopt that section. Commissioner Graham made a motion to approve Chapter 5 tracks to include the response to comments, basis statement and the impact on small business. Commissioner McFarland seconded. Vote 3-0.

Mr. Jennings stated they would go to Chapter 9. There were two changes and both changes came from the MSBOA. The first change is on page one. They felt it was important that trainers notify the department where the horses are stabled to facilitate out of competition testing. On page six was the other change for a different purse distribution for the finals only. Commissioner McFarland made a motion that they approve Chapter 9 Sire Stakes with the basis statement, response of the comments, and the impact on small business as written and presented. Commissioner Graham seconded. Vote 3-0.

5. **Review of Draft Revisions to Proposed Amendments to CMR 01-017, Chapter 7.** On August 1, 2018, a Notice of Agency Rulemaking Proposal was published in Maine's five daily newspapers, which began the comment period on proposed amendments to Chapters 5, 7, 9 11, and 17 of the Commission rules. A public hearing was held on August 22, 2018 and the deadline for written comments ended at the close of business on September 7, 2018. The Commission reviewed the comments at its September 22, 2018 meeting and made several decisions about the proposed amendments. The Commission will now review the last couple of undecided sections and determine the content of the final rule. Mr. Jennings stated that they would go to Chapter 7. He directed them to section 46 on page 22. In gray is language he has been working on but the idea is if somebody is listed as the trainer that they actually are involved in the training, and he had some language in there before that talked about periodic contact with the horse but Mr. Sweeney and others didn't think that meant anything. He went back and tried it again. He directed them to page 33 regarding purse distribution. He stated that the two associations weren't comfortable that they had time to vent that with their membership so we left that alone. On page 33 at the bottom what wasn't clear to him is what the Commissioners position was on this one phrase that is grayed out. This is new language. You didn't speak to whether or not you were ok with this one clause "unless prior approval is received from the Commission" with that he needs you to weigh in on and tell him if you would like to have that authority. Commissioner Graham stated his answer is yes. Commissioner McFarland stated that it seems reasonable. In the discussions we had

previously, it was obvious to him there are a number of people here who believe that would allow them to make that decision in cases of special events. Commissioner Timmons agreed with that. They went back to section 46. Commissioner Timmons asked for any comments on section 46. Commissioner Graham stated that he was happy with the way it was written. Commissioner McFarland agreed with Commissioner Graham. Mr. Jennings asked them to go to page 24 at the bottom of the page there is a new section called protection of horses and they put that in because in Chapter 17 there was a fine for essentially cruelty to horses but there was no clear standard not to do that. They received comments on that section and it could be construed to unreasonable hold track officials responsible for protecting horses even if they didn't know or weren't involved in something that may be unacceptable in terms of the treatment of horses. He added the word "knowingly" and then he added a new sentence at the end that says they're liable under this section if they have information given to them about mistreatment of a horse and then they don't exercise that. What it is trying to do is make sure that if they know nothing about this and they've had no opportunity to intervene; the converse is they're not liable. Would that be a fair statement? AAG, Guay stated yes. It's a pretty high threshold and he is speaking as a prosecutor but in order for him if he was prosecuting to show that a track official did something wrong. One, the horse has to have been mistreated. Two, the track official their power their duties that that track official had could have protected that horse, so you could be a track official but you can't really have done anything to protect the horse. The third thing is that they had to have known about it, and then the fourth thing is the basis of that knowledge has to be credible information. Credible information like the horse was bleeding and the track official didn't go out and take a look at it, or the horse was severely emaciated in the paddock and the track official just didn't bother to go look at it. Mr. Jennings stated that they still would have had to be informed. AAG, Guay stated yes, they would have had to be informed and it has to be credible evidence. Mr. Jennings asked AAG, Guay in his mind does it address the concern that was voiced. AAG, Guay stated yeah. He didn't get into the drafting but he understood the concern before was just because he's a track official all of a sudden, he can be responsible for anything that happened to any of the horses for any of my events and that's not the intent. In his opinion, if he's going to prosecute this it would have to be a pretty obvious case that the official could have done something about it and the official knew about it, so he would at least need a witness that would say I told the track official this horse was bleeding or the horse was laying on the ground and the track official said I'm having a hamburger right now I'm not going to do anything. That's the difference. This language reflects willful neglect on the basis of a track official. Mr. Jennings stated that those were the three things that were tweaked from the last time you looked at it. If you are agreeable to all three of these, then at the next meeting he will bring all the documents necessary for adoption. If you have any word you want to change, let him know now. Commissioner Graham stated that he is all set. Commissioner McFarland stated that he is all set too. Commissioner Timmons stated that they are in agreement. Mr. Jennings stated that he will bring the rules back. AAG, Guay asked Mr. Jennings if the Commissioners have a copy of the schedule in their packets. Mr. Jennings stated no but he does have a copy available. AAG, Guay stated that the schedule that is incorporated by reference in Chapter 11 is here and the Commissioners are looking at it.

Mr. Jennings stated to AAG, Guay that he might want to speak to Chapter 17. He thinks there's a question on Chapter 17. AAG, Guay stated he can make some public comments on Chapter 17 but he's also going to suggest to the Chair that at the end of the meeting that he may consider going into executive session, so the Commissioners can receive some information about the appeal. In terms of the context of rulemaking he's looked at the proposed Chapter 17, and he determined that based on the current litigation he would

not be able to because he's been anticipating that he would do the form and legality review whether he did it or any other attorney in the office of the attorney general he doesn't think Chapter 17 would have been approved. You have the office of the attorney general in a court lawsuit defending the Commission against the Department on essentially Chapter 17, so there's not a lawyer in the office of the attorney general that's going to sign off on the form and legality of the rule. As some of you may remember the appeal was that the Commission found that the applicability of the purse returns in Chapter 17 did not apply in certain cases, so that's why they are not doing Chapter 17. Mr. Jennings asked if they are ready to go onto the next item. Commissioner Timmons stated yes.

6. **Request to Provide Additional Financial Support to Maine's Pari-mutuel Fairs.** The costs of hosting a harness racing meet have risen steadily over the decades while the revenues have dropped precipitously since the advent of casinos in Maine. As a result, Maine's agricultural fairs are finding the economics of continuing harness racing challenging, and in some cases impractical. At the same time, Maine's agricultural fairs provide geographically diverse exposure of the sport, coupled with a loyal fan base and venues steeped in history and tradition. The staff is requesting that the Commission consider providing additional financial support to Maine's pari-mutuel fairs. Commissioner Timmons asked Mr. Jennings to speak first on this matter. Mr. Jennings stated that he has been involved in discussions with Topsham Fair about whether or not they can reasonably and practically continue to offer harness racing given the economics they face. He's also had several discussions with the Maine Harness Horsemen's Association about the idea of whether or not it's important to try to preserve racing at the fairs or whether it's something they should remain on the sidelines on or not. He attempted to do analysis of what does it actually cost to hold harness racing at the fairs. They've looked at the books as provided by Topsham and Mr. McFarland as a race director of Windsor Fair has also done his own analysis of what it cost to conduct a harness racing meet on a per day basis. He's analysis is very well aligned with the books that were provided from Topsham Fair. We've got some very expensive contracts and then you have to hire a bunch of personnel. There are two different sets of employees that tend to add up and be expensive on top of the three big contracts which are the tote contract, the gate contract, and international sound. Based on that analysis he believes the per day cost of holding a meet is somewhere around between \$10,000 to \$12,000. The amount of money that comes back through the handle for some of the smaller fairs does not really justify that expense. Topsham Fair lost nearly \$30,000 on racing in 2018 and they don't believe they need to necessarily make a profit because they feel racing is a piece of entertainment, but they don't think they can lose \$30,000 a year and be able to continue racing. He talked this through with the MHHA very extensively and he knows there are a lot of constituents in this industry and they all lie to a certain degree on funding that comes through the cascade. He has arrived at the position that retaining racing at fairs is in the best interest of the industry in the long term. He thinks it's something they need to ask themselves whether we want to do this. He's asking if they support the idea of taking money out of his budget which would end up increasing the administrative assessment against the racino which would take a small amount of money out of everybody's pocket all of the recipients, and he thinks they should do is potentially provide financial assistance to the fairs and he's going to propose \$2,000 per race day and for any fair, it doesn't matter which fair it is. The MHHA gives money to the fairs too out of their budget, but they only do it to the fairs that are in the weakest financial condition. He's going to ask the Commissioners if they support the idea of providing an additional \$2,000 per day to the fairs to race because otherwise not only are they going to lose Topsham in 2019 but he would guess that a few of the other fairs will follow in the

succeeding years. He vented this through the MHHA and he believes they are in agreement to support this proposal. They're only one constituent and there are other recipients. Right now, he believes they have 45 fair race days. He would put it in the next budget that you approve anyway. Commissioner Graham stated that he is certainly in favor of it. Commissioner McFarland stated that the agricultural fairs as far as harness racing goes as everyone knows has struggled. As a race director and caring of very much about harness racing, he's always encouraged the sire stakes and thanked them many times about going to Presque Isle because he knows it's a cost and a haul for horsemen. Northern Maine right now isn't even licensed for this year and he doesn't know what's going to happen with that. Without the money when the MHHA stepped up and gave the five struggling fairs and one of those five is now gone, Oxford, so they know that didn't completely bring them out of the position they were in. They decided to not have harness racing any more. Without the \$1,600 a day already given by MHHA in their budget he does believe at least three of those four fairs would be gone right now. He's always felt that way. It just cost a lot of finance to put on harness racing as Mr. Jennings just explained. Certainly, from his standpoint at his local fair although they may be more successful and some of the other bigger fairs may be more successful he still thinks they are all on the bubble per say. They can absorb it better than the three largest fairs then some of the others, but he knows his chairman can speak on this himself. If you believe that the harness racing needs to survive at the agricultural fairs, then they do and would receive readily the support they're willing to provide. Commissioner Timmons asked for any comments from the audience. Mr. Lamarre stated that he couldn't agree more. He works at Topsham and Union. The cost is tremendous. They are working on basically a 16 percent profit margin. Most of the money comes from Bangor slots. Dr. Matzkin asked if \$2,000 a day is going to be enough. Mr. Jennings stated that he met with Topsham and talked about the expenses. There are some horsemen that have stepped up and are trying to work with the fairs. There is a number of things going on. As he understands it they are waiting to hear what happens today and take that vote on Monday to decide whether to race next year. They will probably vote no if the commission doesn't support that. He doesn't know that for sure but there is a good chance they vote yes if the commission approves that. Commissioner McFarland had a clarification question. That \$30,000 was that after they got their \$8,000 from MHHA. Mr. Jennings stated that was after. Mr. Sweeney stated that first of all Scarborough Downs agrees with Mr. Jennings and with most members of the industry that racing at the fairs should be sustained and encouraged, and we can't afford to lose any venues that currently provide opportunities for harness racing to be showcased and that also includes the pari-mutuel tracks. Bangor and Scarborough also have substantial expenses when it comes to putting on a harness racing meets and their revenues also have dropped since the advent of casino gaming in the state of Maine. They are starting to see really bad trends in the industry right now and he'll start talking about purses. If we're going to be reallocating money from different parts of the cascade to support the fairs, that money is going to be coming from other entities. Overnight purses have begun to show a decline in recent years. In 2010 which seemed to be a really good high watermark for the industry there was almost 7.3 million in overnight purses paid out. In 2016 that was down to 5.6 million in overnight purses and the trend continues. In sire stakes the high point was in 2012 when 2.2 million purses were paid out and in 2016 there was 1.7 million in purses were paid out. The trend is continuing to go down when it comes to purses. We talk about wages and he can only talk about wages at his racetrack but it's broken down into various categories. First, the interstate wages which is the bet at Scarborough Downs on other tracks outside of the state where their simulcast wagering handle. In 2005, they were at the high point with simulcast wagering at the Downs where they handled about 4.4 million. In 2016 that wagering was down 1.9 million. There's a huge trend away from

profitability when it comes to wagering. If they didn't have simulcast wagering at Scarborough Downs, they probably wouldn't be here right now. Live racing does not pay for itself. This is their secondary product offering that allows them to keep the doors open. The on track live wager at Scarborough Downs, the high point was in 2002 when they had 2.6 million wagered on the live product. In 2016 that was down to less than a million it was \$998,000 of live wagered on track. Their revenue on live racing went from \$414,000 in 2002 down to \$157,000 in 2016 and that trend continues downward. OTB parlor wagering this is the amount of money that's bet on their product bet at the OTB parlors in 2002 before the casino gaming came in 1.1 million bet on Scarborough Downs product at OTB's. In 2016, \$189,000 was bet on the Scarborough Downs product at the OTB's. Their revenue when down from \$88,000 from the OTB's in 2002 down to \$14,000. That's what they made from OTB wagering last year. They are projecting this year that revenue is going to go down to \$9,800 from the OTB's. Interstate wagering which is bet on their product from Bangor Raceway. That's held fairly steady. The high point was in 2006 when \$132,000 was bet on Scarborough Downs racing at Bangor. In 2016 it's down to \$86,000 but it's not as near a huge drop as they've seen in some of the other categories, and then the other part of revenue at the commercial tracks and the fairs to deal with the stipend funds the monies that come in through the casinos. There are a couple of funds that don't even hit the register anymore. The first is the extended meet fund. That is a function of the live handle. The last time there was a distribution made out of the extended meet fund was in 2010. It went from a high point of \$85,000 in 2002 to \$2,000 in 2010 and there's been no distribution from that fund since. The capital improvement fund which you get capital improvement money to help with the track. The last time there was a distribution from the capital improvement fund was in 2012 when \$1,470 was sent to Scarborough Downs from that fund since then they have not met the pari-mutuel handle in the state of Maine, and there has been no distribution from the cap fund. In 2002, \$146,000 went to the Downs so that they could help to maintain the properties. That's a huge nut right there. The OTB simulcast fund was another area where they got substantial revenues or they did. In 2002, they realized \$957,000 in revenue from the OTB simulcast fund. In 2016 that revenue had gone down to \$157,000 that's an 800,000 decrease in revenues to the Downs from the OTB simulcast fund. Part of the reason for that is the decrease in handle also part of the reason for that is the fact that more entities are simulcasting their races. When the fairs started to simulcast their product which they have every right to do and they encourage that, it certainly cut into the amount of money that was going to be sent to the two pari-mutuel tracks. That has affected them to the tune of \$800,000 and then the big fund the 4 percent fund this is the fund to support harness racing. This is the one where everybody just assumes the Downs and Bangor are just swimming in money because of this fund. It came into being in 2005 when the legislation was first put in. There was a partial year distribution in 2005 where they realized that \$111,000 in revenue from that fund. The first full year of operation of that fund in 2006 the Downs realized \$943,000. The fund was doing what it was supposed to do. They realizing as an industry that with a casino in Bangor that it was going to affect the revenue streams to the other commercial track and they needed to have two commercial tracks in the state; and therefore, the 4 percent fund was setup. It reached a high watermark in 2010 when they got \$1.4 million from the 4 percent fund and it has steadily gone downhill since then to the point where in 2017 their projections are they're going to receive \$856,000 from the 4 percent fund, so you take these two major funds and you put them together the OTB simulcasting fund is down \$800,000 from where it was. The 4 percent fund is only generating \$800,000 for them, they're at a net breakeven point between those two funds. And with the pari-mutuel handle continuing to decrease they're seeing more and more of the inability to generate a positive P&L. Their P&L is not on a positive point right now. They're striving to make

it that way. They are consolidating positions and they are doing everything they can to make sure that racing continues at the Downs, but they can't afford another hit. The last time there was a reallocation of money through the stipend funds was to support the OTB parlors. That was like 3 or 4 years ago. That reallocation while it did prop up the OTB parlors. It took \$50,000 a year away from their revenue stream at Scarborough Downs. You look at the amount of money that's being generated for the Downs from the OTB parlors you see how that continues to go down. The idea of putting OTB wagering in place the first time was it was going to support the commercial tracks and it's not doing that. The commercial tracks are supporting the OTB parlors right now. Their total revenues from the pari-mutuel side and from the stipend funds have gone down from a high in 2006 of \$4.7 million to 2017 an estimate of \$2.1 million. More than half in just 10 or 11 year short years. They're struggling and he understands that the fairs are struggling but the pari-mutuel tracks are struggling too. It's going to be very difficult for them to continue to strive to continue racing at Scarborough Downs if you take more money away from them. Commissioner Timmons asked if anyone else had any comments they'd like to make. Ms. Patterson stated that their board did discuss this in length and the board was missing one member last night but the board voted unanimously to support Mr. Jennings decision in supporting the fairs. Commissioner Timmons asked if they continue supporting the five fairs and it would only stay with those five fairs. Ms. Patterson stated four fairs because Oxford is no longer racing but yes, it is the \$40,000 is in their budget. Commissioner Timmons asked in addition to what we're talking about and what Mr. Jennings is talking about for the third or fourth year. Ms. Patterson stated that those fairs will still continue to get \$1,600 a day from MHHA. Commissioner Timmons asked if Ms. Patterson could tell him which ones they are. Ms. Patterson stated Northern Maine, Topsham, Union and Farmington. Commissioner Timmons asked what if Northern Maine doesn't race. Ms. Patterson stated that it's still in their budget. Their budget just went through the first stage and it has several more, and hopefully they'll find out what Northern Maine plans on doing. Their budget can be adjusted. She has to present it to the Commission in February. Commissioner Timmons asked what would on the surface to him feels fair would be if that total amount that went to those four and the \$2,000 that Mr. Jennings is talking about now that it was equal with all the Maine fairs that raced, and not the four that were mentioned because those four have received those funds for at least four years in a row. It might drop it a little but the other fairs whether it's Fryeburg, whether it's Cumberland, or whether it's Skowhegan he can speak for Cumberland that they probably lost more than \$30,000; however, after 105 years and the roll that he plays himself is that it's entertainment. They spend \$60,000 to have monster trucks and he'd just as soon not put all the numbers down every single day in front of my directors and say well we lose here and they lose there because we have set amount of horses that came from Scarborough. We have 150 horses at Cumberland and they have a larger amount of money coming in from rental. The people that live there are mostly all horse people, so that \$100,000 that comes in offsets some of the other things that they have that other fairs might not have. A long story short, we worked very hard to get that support for those five at that time for those four fairs and Northern Maine came out of that. He would think that you might look at the total amount of money that we're talking about now and see all the Maine fairs are treated the same. He doesn't see any difference being the expenses being any difference at Union, Topsham, Skowhegan, Cumberland or Fryeburg. It was said that it was about \$10,000 or \$11,000 a day to run the program. If it rains two or three days that just goes down the tubes as well. That's just his thought, but he supports. Would the other two commissioners and the people that spoke that the program the Mr. Jennings has mention will definitely be positive. He hopes Northern Maine will race because he hates to see any fairs go out of business. Commissioner McFarland stated that he would like to make a comment along that line. He would like

everybody know first he wants to commend Mr. Sweeney on what he said because without the out of state bet the simulcast bet he has to agree with him they would be out of business a long time ago in that respect. If you look at the books and look at the figures it's pretty easy to figure out after a while. They just had a meeting with United Tote and he was nervous going into that meeting which was this summer because they sign five year contracts and they realize through their representatives in Maine that the fairs are struggling. They offered them a contract with all of them that were there, the race directors felt was very satisfying for them. They didn't take any substantial increase and it would be incremented by 2 percent a year for the next five years which they thought was pretty reasonable. International Sound's contract is up this year in 2019. He doesn't know how they will treat them for the next five-year period. The other side is the starting gates. They were fortunate to get Joe Morris to buy Billy Faucher's gates and all the other equipment, and they maintained their rate at the same level as 2017. As far as the revenues, the revenues are all going down but the expenses are all going up. Those are the three big expenses that they all have and then the employees would be the next one. Mr. Sweeney stated that they use International Sound at Scarborough Downs too. They've had a long relationship with them and they try to help them out when they can. They only need International Sound at the Downs for the 70 plus days that they race, but because International Sound needs to maintain fulltime employees so that they will be available to go on to the fair circuit. Scarborough Downs has agreed for years to pay a higher contract fee for them to have those employees working during the winter months at the Downs. They could like the OTB parlors could flip a switch and turn the signal on for their simulcast wagering at the Downs but they have International Sound employees who get paid through their contract to do that. They do that to help supplement the industry. They don't have any land left but if they can't turn a profit they're not going to be there. They can't afford to lose any more of their revenue and that's what this proposal will do. Mr. Jennings stated what he needs is a direction from the Commission on whether to proceed and include this proposal with any number you decide \$2,000 is something he's gone back and forth with the horsemen. It's a little under 1 percent. The discussions he's had with them is that we had a request for proposals this summer for laboratory contracts and they got three bids this year. They changed labs and in doing that we will save in the neighborhood of \$180,000 a year. This proposal could amount to somewhere between \$90,000 and \$100,000 at the \$2,000 a day level, so just in that one line item of saving \$180,000. In a sense, they should not be deluding the rest of the cascade if you count it against what they are saving. Commissioner Timmons asked if they need a motion. AAG, Guay stated that they could do a straw poll. He doesn't think they can vote. One because you don't have a budget and two, there are other complexities that are involved. He doesn't think a stand-alone motion to increase to provide relief to fairs that would require some evaluation of whether the commissioners were qualified to vote on that. He thinks when it comes time to the annual budget process and this item is in there then he thinks they're probably ok but he would strongly suggest not voting since two of the three are fair people that you would take any official action on a stand-alone item on this. He would strongly suggest you do a straw poll to allow the department to prepare their budget for next year, and that's where you'd limit that. Commissioner Timmons asked the Commissioners what they would like to do. All three Commissioners stated to move forward on this item. Mr. Jennings stated that they would move forward at \$2,000 and this item would show up on the next budget.

7. **Discussion about Potential Harness Racing Statute Changes.** 8 M.R.S. § 263-B charges the Department with maintaining an ongoing review of the harness racing statutes and to make recommendations to the Governor and the Legislature regarding the need for changes to improve the condition of the harness racing industry. The

Commission has already discussed certain desirable changes, and will continue the discussion about whether additional changes are advisable.

Mr. Jennings stated that the department is supposed to keep an ongoing list of desirable changes to the statutes. We had a discussion earlier in the year about purse returns. He believed at that time he had all three of the commissioners stating that the purse returns are something that should happen when there is a violation of prohibited substance standards. He is just holding that one. Chapter 17 right now has one exception for that. For the lowest level NSAID. There is an exception to purse returns in Chapter 17 if you have a couple of the NSAID's at a lower level than there's a warning for a first offense. He doesn't know if he's going to get a bill in because the department bills have to be approved by the Governor. He still needs to maintain his list. Just some clarification on what your position is on purse returns. AAG, Guay stated he would like to ask a question. This is based on how the statute is currently written. His question is based on how it's written in order to understand how it needs to be changed in order to get it to how you want it to be. His question is a little bit different than Mr. Jennings. The way the prohibited substance works whether you intended to do it this way or not there is this broad class called prohibited substances and what those substances and the rule is that those substances cannot be in a horse above naturally occurring levels. For those of you who remember the Cobalt cases. It's what is naturally occurring. That is the bedrock principle of prohibited substances. If it's not naturally occurring in the horse, it's prohibited. Then you have in your system you have something called permitted medications and what that says is these don't naturally occur in the horse but we have decided there are 24, 26 substances because they are used by veterinarians for treating horses that have specific conditions; in other words, you can't just give these things to a horse because they're ok but because veterinarians use them we're going to allow them to be in the horse understanding they're not natural. Horses have a certain natural level of steroids but to the extent a vet puts it in them it takes it higher than natural. What you've said is under your rules is that if there's something in a horse that is not there natural that's a prohibited substance. We will allow a vet to put these 26 substances in a horse. What you need to decide because the way the statute's written is if there's an exceedance and the vet puts too much of the stuff in whether or not those are cases where the purse return would happen. It's pretty clear the way the laws written now that if it's a prohibited substance you could very easily change the law if you want to have it limited the purse returns to prohibited substances. If you want to have purse returns for permitted medications that would take a little more drafting difference. What you need to decide is whether you want to have purses returned for including when vets are giving permitted medication to animals. In other words, if there's ever a time all positive test you have a purse return that's sort of the threshold decision you need to make because that has been your practice. Any time there was a positive test it doesn't matter whether it was a permitted medication or a prohibited substance there was a purse return. You need to tell Mr. Jennings which way you'd like it to roll in the future. Commissioner Graham stated that his opinion is positive test return of purse except for the very small ones we have now allow for very minor fractions in Chapter 17. Commissioner Timmons asked if he was talking Lasix and Bute. Commissioner Graham stated right. Commissioner Timmons asked the written warning ones. Mr. Jennings stated that is greater than 5 less than 8. AAG, Guay asked Dr. Matzkin are our rules and regulations sort of a hybrid we used to have time based withdrawal guidelines which just to be clear to the industry that does not exist anymore that's long gone. Were those levels calculated around those time-based withdrawals those lower levels. Dr. Matzkin stated absolutely. AAG, Guay stated to the extent that you have the new ARCI. We used to have time based now we have the ARCI. Dr. Matzkin stated that we never had time based rules. Our rules always been those numbers those thresholds. We had a document that had

withdrawal guidelines that we've now thrown out. AAG, Guay stated he thought we had a permitted medication program that allowed for the injection of or the use of Bute 5 days out at a certain threshold. Dr. Matzkin stated 24-hour rule which then got changed. AAG, Guay stated so there was a time-based rule. Dr. Matzkin stated he guess so. Mr. Jennings stated that they could go back to the Secretary of State. AAG, Guay stated to the extent that you have passes they may not be connected to the current structure that you have with the ARCI. They were based on the 24-hour rule, that's where these lower level violations were. Does ARCI have certain violations where there is no purse returns in their schedule. Dr. Matzkin stated that they took these penalty tables right out of the model rules. They adjusted some of them down because their recommended penalties are quite a bit higher than what our industry is. They adjusted them down based on our purses. He doesn't know if their lowest level is a written warning but he thinks it is and it still is for those permitted NSAID's that are part of those three that you are allowed to give the day before. AAG, Guay stated it makes a difference because he's going to be doing the form and legality. They just adopted this ARCI schedule. Dr. Matzkin stated that he keeps calling it the schedule but the therapeutic medication schedule is the document that we have now thrown out all references to. You should be talking about the uniform classification. The list we now use. AAG, Guay stated that he's looking forward if they change the statute there is a couple of things the legislature could do a couple of paths. Then it seems like the path the commission is taken is to use these ARCI list. He just wants to make sure that since this is now the preferred way to do it we just did it today, and he thinks it makes sense because you've got all these experts, scientist doing all this testing and they publish these things. He also heard for the lower level ones they want to be able to just have a warning without a purse return. He just wants to make sure the ARCI match that. Dr. Matzkin stated that he thinks that still matches the ARCI. If you didn't have purse returns for permitted medications, we basically would have no purse returns. AAG, Guay stated that the legislature is going to have to change one of the phrases in there. Dr. Matzkin stated that their biggest deterrent is the purse return and we would be without it if they didn't have that list. AAG, Guay stated that if this commission didn't want to do it for permitted medications that is purely adding a sentence in 279-A, but if they want to do it for permitted medications there is actually two changes that need to be made. Commissioner Timmons asked Commissioner McFarland if he had any comments on the way you'd like to see this go. Commissioner McFarland stated that he would like to see it be black and white when it comes to whether there's a purse return for a violation over a certain level of permitted medication. That is what we need to fix. He is totally in agreement with prohibited substances level A and B and everything into C. Therapeutic medications are allowed up to a certain level and if we have a statute that clearly says you're over that level and he believes these come right out of the ARCI that you have to return the purse. Commissioner Timmons agreed and Commissioner Graham also agreed and he thinks they somehow need to make sure we get it done this year. Commissioner McFarland stated that this whole process has weighed on a number of individuals. It would be nice to get it fixed as soon as possible. We are at the mercy of the legislature also. Mr. Jennings stated that he thinks there's a strong possibility he may not be able to get a department bill in but there are legislators that are interested in this area. Commissioner Timmons asked if there is anything else on that. Mr. Jennings stated is there anything that the Commissioners have identified in Chapter 11 statutes besides the purse return issue that they would like to see changed. AAG, Guay asked the Commission one area where they are different than other agencies and that is this requirement other agencies that there's a quorum to conduct a meeting so that would be three out of five and then subsequent to that the statute's fairly silent. Your statute might infer that it takes three votes not only does it take three people to have a meeting and that's ok but let's say there's a case where either Cumberland or Windsor's

involved, so one of you guys needs to like back off. That's what happened in the race date hearing. We only had three Commissioners. He would suggest that you would take that additional, it takes a vote of three members to transact any business but rather just have it takes the quorum requirement is a majority of the members but to take out the language saying "it takes three members to pass a vote" because you may only have three people at a meeting and one person has to abstain because it's referring to their track. He would suggest that would be a good change to make as well. You would bring yourselves in compliance into conformity with most of the agencies he represents. Mr. Sweeney stated that he would like to make a recommendation for statutory change that the Commission might want to get behind that could be included in this bill and it deals with an issue that we were talking about earlier in the day and that's funding for the associations that put on the performances for the fairs and pari-mutuel tracks. He understands there is a reluctant and rightfully so to address anything through the cascades, so be completely assured that what he is talking about does not need to go through any legislation that deals with the cascades. There is another stream of revenue for the industry it comes from the pari-mutuel handle. A portion of the pari-mutuel handle comes back to the associations currently. A portion of it goes into the horsemen's purse account, a portion goes to the promotion board or what used to be the promotion board, a portion goes to the sire stakes fund and a portion goes to the state. If we're looking at ways to increase funding for the associations who are all losing money putting on harness racing that might be a place for us to look. It may be applicable to take a look at the distribution of the pari-mutuel handle particularly the portion of it that goes to the state and see if we can reallocate some of that money to the associations. That would be the two commercial tracks and all the pari-mutuel fairs. He doesn't have a specific proposal to send to you but he's sure Mr. MacColl would be more than happy to work with Mr. Jennings and his staff to come up with some wording that they could include in a bill. He thinks this could be beneficial for the entire industry. Commissioner Graham stated that he guesses he has no a problem with that, but he thinks it should be a separate bill from the return of purse because he doesn't want that it to be bogged down. Commissioner Timmons stated that he has the sentiment that he is going to work forward.

8. **Overview/Update of 2018 Prohibited Substances Positive Tests.** Miles Greenleaf will give an overview/update of the prohibited substance positive test results that have been reported for the 2018 race season. Mr. Greenleaf stated that they had roughly 3,900 test taken and we've had 4 positive test that have come in front of you. They have adjudicated 4 positive test. Two were in April and two were in May and we have 7 that are pending. That's where we are at for positive test. We had 11 reported to us. We've had 1 TCO2, a testosterone, a Ketoprofen and a methylprednisolone that we've adjudicated. Commissioner Timmons stated that you have 7 right now pending that need to come before us. Mr. Greenleaf stated that they need to be adjudicated. Mr. Jennings stated that they would come before you because we believe we have decided to change how we're going to do consent agreements anyway. AAG, Guay stated that it's up to the Commissioners. They've previously granted you the authority to enter into consent agreements without their review. He thinks what he's heard is that they want to actually do the final approval, and the way that will work is called a consent agenda and it would be listed on the agenda it would be one, two, three just like approving the decision and orders. They would just move for the adoption of consent agreement, a, b, or c. Mr. Jennings stated that's been a formal change that they made but he has no objection to doing it that way, and he thinks there's probably some value in doing it that way because it's more transparent it's more public. It's less probability that people are going to say whatever happened to this one and whatever happened to that one because they'll be on

the agenda. AAG, Guay stated to the extent that you've been given the authority to do it you're not going to do it anymore. You can negotiate them and bring them forward and the Commissioners will approve it. He will repeat this advice to the Commissioners and that is to the extent that you have the executive director out there negotiating and spending a lot of time putting them together he would suggest that you approve them unless you see some real problem with them. Commissioner McFarland stated that he thinks it's important that they know who is being adjudicated because as a Commissioner he would like to be more informed personally, and he doesn't like going to the track and finding out from his people there of what's going on in the industry. It makes them look a little bad. This is a public record and he would like to have it public as far as who's adjudicated each time. AAG, Guay stated that he hates to be disagreeing with people. He seems to always hear but that's sort of his role. The problem they have is in the hearing and he's had this discussion with several people in the industry. Most agencies the people who are making decisions you are sitting here as judges and so typically you don't have like in courts you don't have the judges who are calling balls and strikes and making the decisions. People who are actually involved in the industry. For example, if you go in front of a judge who's making a divorce settlement or making a decision on a divorce they're not part of the family. It's very difficult and he understands the pressures you guys face you guys work in the industry you have tracks and you go there and you hear about stuff. That's not typically the way it works and he knows through many chairman in the past he pushes back the stuff that you folks need to know typically most agencies just like most judges you only hear about it the day of the dispute. You only hear about it the day of the hearing. The fact that you don't hear about it Commissioner McFarland actually makes him feel good. He knows that it makes you uncomfortable because you are in the industry, but if we are doing our jobs properly you don't know who's getting these positive test results. You don't know who's had prior test results. You only hear that on the date of the hearing. He apologizes that's sort of their system of due process and he knows it puts you guys in a very difficult position because you guys are in the industry. He can't even begin to imagine the political pressure that you folks face because you guys are out there earning a living in the very industry that you regulate. Mr. Jennings stated that in his view there are two things we can do to try to address your frustration of being the last people to find out about stuff. One of them is that you get to approve consent agreements so it's on an agenda and there's a public record and everybody knows when something is finalized, and the other is what he's talked about with AAG, Guay and Mr. Greenleaf is that this agenda item that we are on right now which is summary of test results without giving any names is something that they proposed to put on the agenda every month so that we can keep you up to date of here's how it's going, here's how many we have, here's how many are in the cue. AAG, Guay stated he would agree. It allows you, the questions you're asking today is wow we have seven open. He does think to get off track here. He remembers they had a hundred cases. He remembers docket numbers in the hundreds because he was writing six or seven decisions a month. He doesn't know what's happening and he thinks it would be an interesting area of inquiry. Is it the change in lab or is the lab just not picking things up or is there really that much more compliance out in the industry because whatever you guys are doing keep doing it? Commissioner McFarland stated they may have gotten a little wiser. Commissioner Timmons stated he would tell you one other thing that might frustrate you related to politics. Let's say that someone got a positive and came in positive three or four months ago, and it's never come before them and they've continued to race in their venues and get the money, and those people that have abided by the rules are still racing against them and they're still getting their money. That comes out and he doesn't have an answer for it because he doesn't get into it with them. If they have a positive test they have a positive test, but as a Commissioner if it happened several

months ago, and nothing's happened he still doesn't have an answer for that. He doesn't think that's easy to deal with and he's not even sure that it's even true. Maybe they only got the positive test last week but it appears that some got positive test and they raced most of the summer. This is a good time to deal with it now because winters here and there isn't any racing. That's his reason for frustration. AAG, Guay stated that he understands that. What he has heard is the majority of these purse returns and the majority of these cases are for permitted medication cases. It is pretty clear to him from reading and spending hundreds of hours of his life in the last several months in this stuff that the permitted medication violations probably don't make a huge difference in terms of effecting the results of a race. The second thing he would also give you and he knows that Dr. Matzkin might disagree then he would suggest that he look at the ARCI standards, and if you take a look at the guidelines that have just been adopted they in fact essentially promote that concept. If most of these are Class IV violations, then the ARCI describe these as having a very low impact on the performance of a race. That's the first thing in terms of the concern in the industry. The second thing is the fact that these cases aren't being prosecuted doesn't mean the horses are not being tested. If someone is quote cheating, then if they're serially cheating then their horses will be tested positive each time that they cheat, so the concept is if we're delaying prosecuting people that's in allowing people to cheat then the test are going to pick that up. If these trainers are constantly cheating, then he would imagine that we'd have more than seven positive test results at this point. He knows there's a lot of opinions out there but if you take a look at the information, we've got seven test pending. We've had eleven all year that doesn't sound like there's serial cheating going on to him unless the labs are involved, and the labs aren't reporting out the test results. The other thing too is he knows Dr. Matzkin and him will disagree but the ARCI take a look at it we deal with Class IV or drug violations in Class IV this class includes therapeutic medications that would be expected to have less potential to effect performance than a horse in Class III drugs. Dr. Matzkin stated that the therapeutic medications that they deal with are not all Class IV. AAG, Guay stated that it's that constant tension of providing due process to people in the industry verses oh my god there's rampant cheating and he's heard that's killing the industry. Whatever the delay in prosecution this awful purse return case that was going to completely destroy the industry there hasn't been a spike in cheating. He hears the concerns but he would just point out what does the facts actually show. Dr. Matzkin stated that he agrees. Your memories probably a little obscured by that awful year where you had a hundred cases. In actuality it's been going down for years. The lab change is recent enough that it's kind of hard to tell yet if that's made a big different and also the delay. We have this problem with the statute which is why the delay. Even when we don't have that problem it often takes many months. People have the same complaints and will always have those same complaints.

9. Other Business

Mr. Jennings stated that he wanted to share with you that he's working to co-sponsor a planning session on January 30th with the Maine Harness Horsemen's Association. We want to look at some of the issues that they feel are important to the perception of the industry and we may want to make some changes on. He would love to invite the three Commissioners to come but he doesn't think they should because and the reason is because you may have something come in front of you as a result of this meeting where you have to make a decision; and so his purpose in sharing this is really they're trying to do this as cheaply as they possibly can but in order to have an all-day planning session it's going to cost them about \$1,000 or less, and he would just like their blessing on spending \$1,000 for an all-day conference where they're going to try and tackle some

things like how do we feel about whipping and some other questions that are out there that may be important to the industry. He asked the Commission if they were ok with him spending \$1,000 for a planning session. All three Commissioners agreed.

Ms. Patterson stated that they had a meeting and the horsemen would like the Commission to kindly ask Scarborough if they would consider racing the 15th and 16th since they just had to cancel last Sunday and cancel today's card. They're coming down to the end of the season and of course it's pinch time because the horsemen aren't going to race for four months. She was asked to ask the Commission if they would appease to Scarborough and see if they would generously extend their season one extra weekend to race on the 15th and 16th to makeup those two days. Commissioner Timmons stated he thinks he could defer that to Mr. Sweeney and let him try to find the answer for us. AAG, Guay asked if they had the dates. Mr. Sweeney stated that no they do not have the dates. While he appreciates the request and there had been discussion at the track about whether or not to extend the season and they just find it that they are unable to do that this year. They've had some issues. They've had some nasty comments directed their way over what happened over the last week. They're trying their best. They at 6:30 in the morning on Sunday they fully expected to race and it turned out that the presiding judge made a different decision in consultation with drivers on the card. They had a horrible storm come in this past week. He hasn't been in touch with people at the track and he doesn't know if they'd even be able to get out onto the track yet with the equipment to put the 20 tons of stone dust that they have ordered to put onto the track. They've really come to a conclusion that times have really changed right now. He's raced horses 20 or 15 years ago, and he knows they would have raced on that track on Sunday back when he was racing horses. They did race one day in 1999 a day after the big ice storm came in. They do their best to get the track prepared. This time of year, they've come to the conclusion that they are not able to guarantee that they're going to have a racing surface that meets the expectations of today's generation, so it makes it difficult for them. Commissioner Timmons asked if they've made a decision about this weekend racing. Mr. Sweeney stated that they are trying to race this Saturday and Sunday. He had that direction from track management that no they will not be making up any further days this year. Commissioner Timmons asked for public comments. Commissioner Graham stated that he had a question. If Scarborough Downs doesn't race is there some penalty for them haven't raced the number of days they're supposed to. Mr. Sweeney stated that yes, they have. They are required to race 70 days by statute. They already have 71 days in. They've met that requirement. They do lose stipend money by not racing, so when they had to cancel Thursday's card the money coming in from the 4 percent fund did not go to the Downs. They figured they lost a little bit over \$5,000 by not racing that day, and if they are unable to race the remainder of the days likewise they will be losing stipend money. Commissioner Timmons stated that the horsemen will be losing a lot too. Mr. Sweeney stated he does understand that too. Commissioner Graham asked if they could put this issue to bed on Scarborough racing or not racing. The MHHA requested they do it. Commissioner Timmons stated they already said they made the decision that they weren't going to. Commissioner Graham asked if they have any authority to overstep that decision. Mr. Jennings stated that you'd have to reopen the hearing because they don't have those days. AAG, Guay stated yeah, you'd have to award them those dates and then there's a question whether you can make people race when they haven't asked for a day; and then moreover he's hearing that Scarborough was ready willing and able to race on a certain date but the officials made a decision not to allow them to race. That would be a part of that whole process as well as exploring the decision making for the remaining dates. It's a long road to hoe if you want to make them race for the 15th and 16th.

10. Public Comment

Ms. Perkins stated that she wanted to share with them that they have over 100 mares bred which was due in September. She stated that they are almost at the same amount they were last year. She stated that Victor Blue Chip will be on the cover of the Stallion Directory.

Commissioner Timmons asked Commissioner Graham what other suggestions would he have on how we're going to deal with not being able to race. He just feels bad that it's a long winter and these guys are not going to be able to race and they're going to lose more. It makes it extremely difficult on the industry. Commissioner Graham stated that he feels sorry for the horsemen and there isn't anything we can do about it. It's a long time between now and next race dates and he wanted to try and encourage Scarborough to race early next year and they said no.

Kim Pike stated at the race date meeting they were wondering about this and this is something that the Commission could do. Years ago, they used to forego the qualifying time when they opened up in the spring time so they said if your horse is racing in December and when they open up in March they did not have to qualify. Commissioner Timmons stated that they did do that. Ms. Patterson stated that Commissioner Timmons did bring that up so there was no need for some horses to qualify before they raced. Dr. Matzkin stated that they have had a lot of trouble getting the track ready by March. They've canceled those first qualifiers. Mr. Sweeney stated this past year they waived the qualifying rule, but the weather didn't cooperate they ended up having to push their opening day forward a week. They just don't know what is going to happen from year to year basis. Bangor Raceway has come before this commission and told you that due to weather they cannot have their track ready earlier in the year and they cannot have their track racing later in the year. That's generally accepted throughout the industry. They open up at Scarborough before Plainridge race course opens up and close after Plainridge race course closes they're 100 miles south of them and they have a casino that's making amazing amounts of money and there's no huge clamor for them to extend their season. They are the track in between that does not have a casino that they can fall back upon to augment the operation, and yet year after year after year they're the ones that get pounded over the head to open up earlier and close later. It's not fair. There's a question of equity here. He understands horsemen need to make money but by them not being able to race on Sunday they lost \$17,000. They have operating expenses. They had to pay all the officials who made the decision that they weren't going to race, they had to pay everybody they brought in, and they had to heat the grandstand in anticipation of getting the card going. They had a track crew working into the evening to try and get that track ready to race on it. There were comments that they really need to have an all-weather surface at Scarborough. It will be great but at a minimum it's going to cost a quarter of a million dollars to put that surface in and they don't have that money. They are trying to do the best that they can with what they have. They've always tried to be cooperative with the industry. The industry has to understand that there are limits to what they can do. They are really at that limit now. Ms. Perkins stated that generally the race secretary like at Scarborough Downs used to come before you at the race date hearing and ask about that qualifying rule and she doesn't think that was done this year.

11. Schedule of Future Meetings:

December 13, 2018

12. Adjourn

12:00 p.m.